IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-12-2007

CORAM :

THE HONOURABLE MR. JUSTICE A.KULASEKARAN

C.R.P. (PD) No. 1751 of 2006
and
M.P. No. 1 of 2006
-o-

M.K. Madhivadanan .. Petitioner

Versus

R. Samarasam .. Respondent

Revision Petition under Article 227 of The Constitution of India against the Order dated 18.04.2006 made in I.A. No. 23828 of 2005 in O.S. No. 4083 of 2005 on the file of XIV Assistant City Civil Court, Chennai.

For Petitioner : Mr. Srinath Sridevan
For Respondent : Mr. K. Sakthivel

ORDER

The defendant in O.S. No. 4083 of 2005 on the file of XIV Assistant Judge, City Civil Court, Chennai is the revision petitioner. The said suit was filed by the respondent against the petitioner herein for recovery of sum of Rs.84,800/- together with interest. Pending suit, the petitioner herein has filed I.A. No. 23828 of 2005 in O.S. No. 4083 of 2005 under Section 8 (1) of the Arbitration and Conciliation Act, 1996 to refer the parties to arbitration and to dismiss the suit. The said application was dismissed by the court below on 18.04.2006, hence, the present revision petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the court below failed to note that under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996, the suit itself is barred and it ought to have referred the dispute to arbitration; that the court below went wrong in holding that the present dispute is with regard to money and it failed to see that the alleged consideration has come in pursuance of the agreement where arbitration clause is provided; that when any dispute /misunderstanding subsequently arise between the parties, the same should have been tried by arbitrator only as the Civil Court's jurisdiction is ousted, which was not properly considered by the court below. In support of this contention, the learned counsel for the petitioner relied on the below mentioned decisions:-

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i) (Agri Gold Exims Ltd., vs. Sri Lakshmi Knits & Wovens and others) (2007) 3 SCC 686 wherein in Para No.17, it was held thus:-

> "17. The respondents had not filed any written statement in the suit. They had not disclosed their defence. They indisputably had raised a dispute in regard to the claim of the appellant. We have noticed the arbitration agreement entered into by and between the parties. It is of wide amplitude. The arbitration agreement brings within its fold dispute of any nature whatsoever. It is in broadest term. The respondents had made payments without prejudice to their rights and contentions. Payments were made keeping in view the ongoing business relationship between the parties. Out of five post-dated cheques, two were dishonoured. But, despite pendency of the suit, payments had been made to satisfy the claim of the appellant in respect of the cheques which were dishonoured. Sufficient explanation has been offered by the respondents therefor. Certain contingencies of events, as indicated hereinbefore, are not in dispute. If the suit was confined to the amount in respect of those two cheques, the contention of Mr. Rao could have been accepted. But it is not so."

ii) (Andritz Oy rep. through Power of Attorney Agent Mr. Siraj Ahmad, New Delhi vs. Enmas Engineering Pvt Ltd., rep. By its Director and Principal Officer, Chennai and another) (2007) 4 MLJ 290 wherein in Para NO.36, a learned single judge of this Court held thus:-

> "36. The conclusion that the arbitration agreement is severable from the main contract, does not automatically mean that it would always survive the main contract. While the arbitration clause need not always follow the fate of the main contract, of which it is a part, the corollory that it will always survive even if the main contract perishes, cannot be taken to be true.

3. The learned counsel appearing for the respondent submitted that the petitioner and the respondent entered into an agreement of sale dated 16.06.2003 under which the petitioner agreed to sell the suit property at Valasaravakkam for Rs.5 lakhs and thereafter, the petitioner paid Rs.1 lakh towards advance and agreed to pay the balance of Rs.4 lakhs within six months, indeed he was ready to pay the said amount. The petitioner had shelved the scheme and no chance of revival. The respondent has demanded to refund the said amount of Rs.1 lakhs and the petitioner agreed for the same and paid only Rs.20,000/- and promised to pay the balance with interest in five

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months. Even after the said period, the petitioner has not paid the said amount. The respondent has issued an advocate notice dated 27.10.2004 which was evaded by the petitioner and ultimately the suit was filed; that there is no dispute arising out of or in connection with earlier agreement since new oral contract entered into between the parties and there is no need to refer the matter for arbitration; that I.A. No. 23828 of 2005 has been filed only to prolong and divert the proceedings. In support of this contention, the learned counsel for the respondent relied on the decision of the Honourable Supreme Court reported in (Union of India vs. Kishorilal Gupta and Bros) 1959 SCR 493 wherein in Page No.507 and 508, the Honourable Supreme Court held thus:-

> "...Apart from the fact that we are not satisfied with the argument that the description was indefinite, we do not think that such a flaw either invalidates a document or suspends its operation till the defect is rectified or the ambiguity clarified. The substituted agreement gave a new cause of action and obliterated the earlier onces and if there was a valid defence against the enforcement of the new contract in whole or in part, the party affected must take the consequences. We have, therefore, no doubt that the contract dated February 22, 1949, was for valid consideration and the common intention of the parties was that it should be in substitution of the earlier ones and the parties thereto should thereafter look to it alone for enforcement of their claims...
>
> Uninfluenced by authorities of case-law, the logical outcome of the earlier discussion would be that the arbitration clause perished with the original contract. Whether the said clause was a substantive term or a colleteral one, it was none the less an integtral part of the contract, which had no existence *de hors* the contract. It was intended to cover all the disputes arising under the conditions of, or in connection with, the contracts. Though the phraseology was of the widest amplitude, it is inconceivable that the parties intended its survival even after the contract was mutually rescinded and substituted by a new agreement. The fact that the new contract not only did not provide for the survival of the arbitration clause but also the circumstance that it contained both substantive and procedural terms indicates that the parties gave up the terms of the old contracts, including the arbitration clause. The case-law referred to by the learned counsel in this connection, does not, in our view, lend support to his broad contention and indeed the principle on which the

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said decisions are based is a pointer to the contrary."

4. This Court considered the argument of the counsel for both sides. The substituted agreement that repayment of advance by the petitioner to the respondent and part payment made by him subsequently gave a new cause of action and obliterated the earlier one, hence, the suit is maintainable. The decision of the Honourable Supreme Court reported in (Union of India vs. Kishorilal Gupta and Bros) 1959 SCR 493 mentioned supra is squarely applicable to the facts of this case and the decisions relied on by the petitioner cannot be made applicable to the facts of this case.

5. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Rsh

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

The Registrar
City Civil Court
Chennai

1 cc to Mr.Srinath Sridevan, Advocate, SR.73489
1 cc to Mr.K.Sakthivel, Advocate, SR.73063

pvr (co)

dv/2.1.

CRPPD No. 1751 of 2006

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